ally known as philosophical principles, but rather by reflection on such vexed problems as freedom of contract, the personality of corporations, etc. For this reason, this book on Private Law, forming by itself a respectable volume of over 450 pages, is one of the most useful portions of the whole series. Miraglia's handling of the subject of "inherent" rights is based on a somewhat antiquated individualistic or atomistic philosophy, and his treatment of the problem of the family is based on what is now recognized as inadequate anthropologic information; but the essential problems, from which a satisfactory philosophy of law must begin, are stated in a way to compel the thoughtful reader to further reflection. May the book find many such readers!

The translation seems to have been carefully made. The use of the word *consideration*, however, as the equivalent of *causa* in the continental law of contract, is open to objection. In a way this inaccuracy is rather useful, for it tends to break down the widespread fallacy that there is nothing in continental law corresponding to the common-law doctrine of consideration — a fallacy repeated by such a careful writer as Markby. The fact, however, remains that the continental doctrine of *causa civilis* is in its origin and its functioning not the same as *consideration*. A brief note by the editorial committee might have cleared the matter up for the unwary reader.

As the aim of the series is to put the American student in touch with the best continental literature on the subject, one can justly complain that this volume is not sufficiently edited. Miraglia quotes or refers to many authors without mentioning the names of the books involved, and when the latter are mentioned no reference is made to page or chapter. Thus on p. 121 we are informed of a certain interesting view of Kerbaker, but we are not referred to any particular work. Surely the American reader cannot be presumed to be familiar with Kerbaker, an Italian philologist! As the last Italian edition of Miraglia's book is now a decade old, a few references to more recent literature, *e. g.*, the mere mention of Saleilles' La Personalité Juridique, at the end of the chapter on artificial persons, would have been very helpful, and would have brought the book a little more up to date.

There is an elaborate but somewhat mechanically constructed index. The compiler of it does not seem, for instance, to be aware of the identity of St. Thomas and Aquinas, but makes different entries under these separate headings.

With all its faults this book is heartily recommended as a mine from which the patient and critical student may extract a vast deal of information and suggestion. It is to be hoped that the student's task may be made easier soon in a second edition. M. R. C.

THE ORIGIN OF THE ENGLISH CONSTITUTION. By George Burton Adams. New Haven: Yale University Press. London: Henry Frowde, Oxford University Press. 1912. pp. xii, 378.

The thesis of this book, which is an amplification, with important additions, of Professor Adams's earlier articles, is that the principle of the English constitution, that there is a body of law above the king, was derived directly from feudalism, and "that it was the work of the Great Charter of 1215 to transfer it from that system then falling into decline to the newer governmental system just beginning to be formed" (p. 167). The feudal principle enforced by Magna Carta, limiting the authority of the king, Professor Adams finds in the fact of contract. The feudal contract bound both parties, the sovereign as well as the humblest vassal. In Chapter V, which is new, he examines at considerable length the clauses of the Charter and concludes that it is essentially a document of feudal law, pledging the king to respect feudal rights, which

he was already bound to observe, and in clause 61 setting up a definite machinery to enforce his obedience.

The tone of the book is confident, and generally unqualified in spite of the reservation in the note to page 169 and in the concession in a brief clause on page 185 that there were other contributing causes to our constitutional principle of limited monarchy. We think the author has placed too much emphasis on the feudal theory of its origin. Professor Adams concedes (p. 210) that nearly half the clauses in the charter are wholly or in part of non-feudal origin; and as to some others we should dispute his classification of them as feudal. For instance, the famous clause 39 he interprets narrowly to cover only cases in which the barons themselves were concerned. We should prefer a more extensive construction of *liber homo*. Before the Statute of *Quia Emptores*, 1290, there was no direct feudal relation between the king and tenants not tenants in chief. Is the feudal contract (feudal relation would be a better term), then, to account for the limitations that the king puts upon himself in respect of every freeman or subject, as he does in clauses 20, 23, 28, 30–33, 35, and elsewhere, especially in the numerous judicial provisions? How then is Magna Carta "a statement of feudal law"? (p. 169 note). As is also pointed out in that note feudalism furnished in a very slight degree "the body of law by which the king was finally bound." Is it not reasonable then to suppose that there were other influences besides feudalism which had an important bearing on this great principle of constitutional law?

And such other influences are to be found, not only in Anglo-Saxon and Anglo-Norman times, but as part of the conception of royalty in the Frankish Kingdom. Alfred in a sense recognized the old law as binding on him when he told us that he durst not venture to set down much of his own, but collects the dooms of his forefathers.[1] Ethelred ordained that every man should be regarded as entitled to right.[2] The custom of the Norman kings to declare in force the old laws[3] shows the thought that there is a law which the king should observe. Moreover, it has been pointed out that in form at least the king was doing what he and his predecessors had done in the case of the borough. William the Conqueror ordained that the burgesses of London be worthy of all the laws that they were worthy of in the time of King Edward.[4] And in the time of the Frankish kings royalty, even when strongest, was below public and private law.[5] Feudalism was not responsible for these checks on absolutism. Professor Adams would style these "moral limitations of the customary law," which down to Henry I's charter were binding only on the king's conscience. Henry's charter was the first effort to transform them into definite, legally binding limitations. But it was a failure except as a model for the future. Magna Carta, he goes on to say, differed widely from these earlier ideas not only in its principle of feudal contract, only crudely stated in Henry's document, but in the clear recognition of a sanction (clause 61) which legalized insurrection as a last resort to compel the king to obey the law. Upon clause 61 Professor Adams lays great emphasis as giving an institutional or legal character to the king's obligation to observe the law (pp. 177–184, 247–248, 275 *et seq.*). We must note, however, that a law may be a law without a sanction, that legalized rebellion is a curious kind of a sanction, and finally that the clause came to nothing.

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[1] 1 Thorpe, Ancient Laws and Institutes, p. 59.

[2] *Ibid.* p. 305.

[3] Statutes of William I, § 7, Stubbs, Charters, p. 84; Charter of Henry I, §§ 1, 9, 13, *ibid.* pp. 100, 101.

[4] 1 Pollock and Maitland, English Law, 2 ed., 673–674; Charter of Liberties of Henry I, by H. L. Cannon, 15 Am. Hist. Rev. 37, 45.

[5] 2 Brunner, Deutsche Rechtsgeschichte, § 60.

We agree with Professor Adams that the principle of the feudal relation may be one of the causes which resulted in a constitutional check on the king. We cannot agree that it is the prevailing cause upon which great emphasis should be laid. No doubt it accounted in great measure for the limitations which John placed upon himself with respect of his tenants in chief. But there are other reasons of weight at least equal to that of feudalism to be regarded in accounting for the checks to his absolutism with respect of all his subjects.

After all, he who is seeking for the precise origin in history of such a great constitutional principle as the supremacy of the law and who declares that here and now he has found its sole source has an uphill road to travel to reach the summit of proof.

J. W.

THE EYRE OF KENT, 6 & 7 EDWARD II, 1313–14. Volume II; being Volume VII of the Year Book Series of the Selden Society and Volume XXVII of its Proceedings. Edited by William Craddock Bolland. London: Bernard Quaritch. 1912. pp. li, 264.

This is one of the best and most illuminating of the year-book series, and in saying this the wonderful volumes of Professor Maitland are not forgotten. Mr. Bolland has more than fulfilled the promise of his first volume. In his introduction to this volume he has given us an explanation of bills in eyre (p. xxi) and of the authorship of the year-books (p. xxxi), which are as brilliant as some of Maitland's best work. After an investigation which has involved a study of other manuscript materials, Mr. Bolland has proved that the bills in eyre were the simple and untechnical complaints of poor suitors to the judges in eyre, written by the common scribes of the time, and accepted by the court without regard to technical form or learning in the law. As to the authorship of the year-books, Mr. Bolland appears to have established his important conjecture that the books were issued as a commercial venture, being copied from notes taken in court by briefless barristers who were paid by the publishers. He even gives good reason for suspecting that the manuscripts which have survived are the "remainders" of the edition which, being unsold, were not subjected to the wear and tear of daily use.

Mr. Bolland has included a corrected copy with translation of a treatise of mediæval French orthography first published by Mr. Thomas Wright. The cases included in the year-book are of unusual interest and value. The Selden Society is to be congratulated upon one of its most valuable volumes.

J. H. B.

A TREATISE ON THE LAWS GOVERNING THE EXCLUSION AND EXPULSION OF ALIENS IN THE UNITED STATES. By Clement L. Bouvé. Washington, D. C.: John Byrne and Company. 1912. pp. xxvi, 915.

THE TREATY-MAKING POWER OF THE UNITED STATES AND THE METHODS OF ITS ENFORCEMENT AS AFFECTING THE POLICE POWERS OF THE STATES. By Charles H. Burr. Reprinted from Proceedings of the American Philosophical Society for 1912. Vol. LI. pp. 269–422.

THE NEW CUSHING'S MANUAL OF PARLIAMENTARY LAW AND PRACTICE. Revised and Enlarged. By Charles Kelsey Gaines. New York: Thompson Brown Company. 1912. pp. xv, 263.

IMMIGRATION AND LABOR. The Economic Aspects of European Immigration to the United States. By Isaac A. Hourwich, New York and London: G. P. Putnam's Sons. 1912. pp. xvii, 544.